



CITY OF SOMERVILLE, MASSACHUSETTS
LAW DEPARTMENT

May 10, 2019

City Council
City Hall
93 Highland Avenue
Somerville, MA 02143

Re: That the City Solicitor update this Council as it relates to the communication received from Newport Construction Corp. on March 25, 2019

Board Order No. 207904

Dear Honorable Councilors:

You have asked this office to provide an update relating to the above-referenced communication received from Newport Construction Corp. In response, I provide the following information.

On January 31, 2019, the Somerville Tree Warden issued a Notice of Violation to both Newport Construction and Northern Tree Service, Inc. relative to the unauthorized removal of public shade trees on Beacon Street on or about October 6, 2017. I am informed no response was received to this notice. On March 14, 2019, this office transmitted a follow-up demand letter to both entities. In response to this letter, counsel for Northern Tree Service, Inc. contacted this office to discuss the matter, and this office is awaiting further information from counsel. By the letter referenced above, Newport Construction Corp. responded only in writing to communicate their position that they are not a proper party.

Please contact this office if you have any additional questions.

Very truly yours,

Jason D. Grossfield
Assistant City Solicitor

cc: Mayor Joseph A. Curtatone
John Long, City Clerk



SOMERVILLE CITY HALL • 93 HIGHLAND AVENUE • SOMERVILLE, MASSACHUSETTS 02143
(617) 625-6600, EXT. 4400 • TTY: (617) 666-0001 • FAX: (617) 776-8847
www.somervillema.gov • E-mail: Law@somervillema.gov





CITY OF SOMERVILLE, MASSACHUSETTS
LAW DEPARTMENT

March 14, 2019

Newport Construction
Attn: Richard A. Defelice, Pres.
145 Temple Street
Nashua, NH 03060

Northern Tree Service, Inc.
Attn: Timothy Lamotte, Pres.
1290 Park Street
Palmer, MA 01069

Re: **UNAUTHORIZED REMOVAL OF PUBLIC SHADE TREES – BEACON STREET**

Dear Sir or Madam:

I contact you in my capacity as legal counsel to the City of Somerville and its Tree Warden. The City of Somerville Tree Warden ("Tree Warden") has referred the above-referenced matter to this office for follow-up in order to recover payment for the damage to public shade trees in the amount of \$38,000.00, as set forth in detail in the enclosed Tree Warden's correspondence to you dated January 31, 2019. It is my understanding that no response has been received to-date by the Tree Warden to the January 31, 2019 letter.

The Tree Warden has determined that public shade trees were removed without proper authorization on Beacon Street in Somerville in 2017 and that your entity was responsible for the cutting and/or removal of approximately thirty-eight (38) public shade trees.

On behalf of the City of Somerville, I hereby demand that you respond to this letter in writing within fourteen (14) days of receipt as to your payment to compensate the City of Somerville for the damages suffered in the amount of \$38,000.00.

The City of Somerville and its Tree Warden reserve the right to take any legal action necessary, including but not limited to filing a civil action, to recover for these damages. Should you have an insurance carrier, you may wish to forward this correspondence to them for immediate attention. Should you be represented by counsel, please have your attorney contact me to discuss this matter. Thank you for your anticipated prompt attention to this matter.

Respectfully,


Jason D. Grossfield
Assistant City Solicitor

Enc.

cc: Steven P. MacEachern, Tree Warden



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**CITY OF SOMERVILLE, MASSACHUSETTS
DEPARTMENT OF PUBLIC WORKS**

**JOSEPH A. CURTATONE
MAYOR**

STAN KOTY
COMMISSIONER

RICHARD WILLETTE
DIRECTOR OF OPERATIONS

January 31, 2019

VIA CERTIFIED & FIRST CLASS MAIL

Newport Construction
145 Temple Street
Nashua, NH 03060

Northern Tree Service, Inc.
1290 Park Street
Palmer, MA 01069

Re: **UNAUTHORIZED REMOVAL OF PUBLIC SHADE TREES – BEACON STREET
NOTICE OF VIOLATION**

Dear Sir or Madam:

This notice is issued in my capacity as the City of Somerville Tree Warden in connection with the unauthorized removal of public shade trees on Beacon Street in Somerville, MA in 2017.

On or about October 6, 2017, I am informed that you cut and removed approximately thirty-eight (38) public shade trees on or about Beacon Street, a public way in the city of Somerville, without the prior required approval of this office in accordance with all applicable provisions of MGL c. 87, and City Ordinance 12-100 et seq.

Based on the above circumstances, I hereby determine that your acts are responsible for causing damage to said trees, and seek reimbursement for these damages to the City of Somerville. Accordingly, you are requested to make payment in the amount of \$38,000.00 to the City of Somerville, in order to resolve this matter. See MGL c. 87, s. 12; MGL, 242, s. 7. This amount is based upon the cost to the City to replant a tree at a rate of \$1,000 per tree based on current contract terms for such services.

You are hereby notified that, unless you make payment in the amount of \$38,000 within twenty-one (21) days of the date of this letter, this office will assume that you do not intend to voluntarily pay to remedy the damages in this matter and will be forced to institute court action against you. You may make your check payable to the City of Somerville, Attn: Law Department, 93 Highland Avenue, Somerville, MA 02143.

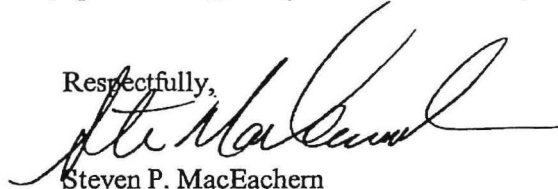




CITY OF SOMERVILLE, MASSACHUSETTS
JOSEPH A. CURTATONE
MAYOR

This office and the City of Somerville reserve its legal rights and remedies to file a civil action to recover any and all damages including without limitation the amounts referenced in this notice. Please contact this office if you have any questions regarding this notice. Thank you for your prompt attention to this matter.

Respectfully,



Steven P. MacEachern
Tree Warden

cc: John McGillicuddy, Resident Engineer, MassDOT
Board of Aldermen
Jason Grossfield, Asst. City Solicitor





2019 MAR 28 A 11: 19

CITY CLERK'S OFFICE
SOMERVILLE, MA

March 25, 2019

Jason D. Grossfield
Assistant City Solicitor
Somerville City Hall
93 Highland Avenue
Somerville, MA 02143

Re: Unauthorized Removal of Public Shade Trees – Beacon Street

Dear Mr. Grossfield,

Newport Construction is in receipt of your correspondence dated March 14, 2019 with respect to the removal of 38 shade trees on Beacon Street, Somerville, Mass. As of this writing today, my response to you is that Newport Construction has no intention of paying Thirty Eight Thousand Dollars (\$38,000.00) to The City of Somerville for this alleged violation.

Newport Construction has a legal and binding contract with the Massachusetts Highway Department to construct Beacon Street. There are many contract items to be performed including, utility installation, roadway excavation, new granite curbing, new cement sidewalks, new bike lanes, new traffic signals, tree removal, new plantings both shrubs and trees etc. Newport Construction bid this contract under The Massachusetts Public bidding laws and were the responsible low bidder. In preparation of this bid process the MHD issued plans and specifications for all bidders to ascertain the knowledge needed to prepare its bid. The project documents include stamped, engineered plans that clearly show the limits of construction and associated items to be executed. Newport has followed these plans and has executed all items under its contract.

It is my contention that your request for payment is addressed to the wrong party. Newport did not design this project nor did Newport issue the legal contract with documents to be followed and adhered to.

It is my understanding that the contract drawings required some time to develop and that Somerville residents would have had ample time to comment on the design and would have been able to address any and all concerns at those meetings.

NEWPORT

CONSTRUCTION CORPORATION

Jason D. Grossfield
Assistant City Solicitor
Page 2 of 2

Thank you for your correspondence, I consider this matter closed.

Sincerely,



Richard A. DeFelice
President and CEO
Newport Construction Corporation

cc: Mayor Mr. Joseph Curtatone
Steve MacEachern -Tree Warden
Board of Alderman
Mr. Stan Koty - Commissioner
Mr. Paul Stedman - DHE District 4



City of Somerville Massachusetts

Agenda Item 206959

Kept in Committee
Nov 29, 2018 7:00 PM

That the Administration deem Newport Construction and Northern Tree to be "not considered responsible bidders or offerors" for 5 years, reflecting their performance on the Beacon St Reconstruction.

Information

Department:	Public Utilities and Public Works Committee	Sponsors:	Ward Two City Councilor Jefferson Thomas ("J.T.") Scott
Category:	Resolution	Purposes:	Resolution

Official Text

That the Administration prepare a memo for the Purchasing Department deeming Newport Construction and Northern Tree to be "not considered responsible bidders or offerors" for a period of 5 years, in reflection of their performance on the Beacon St Reconstruction.

Meeting History

Nov 8, 2018 7:00 PM Video	City Council	Regular Meeting
RESULT: APPROVED		
Nov 29, 2018 7:00 PM Video	Public Utilities and Public Works Committee	Committee Meeting

The committee had questions about what would happen should responsive low bidder be identified with previous work that was unacceptable. Mr. Snyder stated the bidding process is conducted by the purchasing department along with a panel to review the bids. It was suggested that there be a "red flag" should be included in its file so that in the event that Newport Construction is a low bidder on a City project, it is deemed to be not qualified. The administration will continue to explore this matter with the purchasing and law departments. Additionally, a communication to the vendor regarding improper removal of the trees has been prepared with no amount yet. Offices of OSPCD, DPW and Law will determine the appropriate dollar amount regarding the improper removal of trees and then send the appropriate communication to Newport.

Ald. Scott moved an Order that the administration update this board on the institution legal action against Newport regarding improper removal of trees, which was unanimously approved (to receive a separate item and referred back to Committee).

RESULT: KEPT IN COMMITTEE

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City of Somerville Massachusetts

Work Completed
Dec 14, 2017 7:00 PM

Agenda Item 204361

That MA DOT, Newport Construction and all other parties with knowledge of the cutting down of trees on Beacon Street on October 6, without any public notice, appear before this Board at its next regular meeting to respond to concerns about the surprise tree removal.

Information

Department:	City Council	Sponsors:	Ward Two Alderman Maryann M. Heuston, Alderman At Large John M. Connolly, j and the Entire Board
Category:	Order	Purposes:	Order

Official Text

That MASS DOT, Newport Construction and all other parties having knowledge regarding the cutting down of trees on Beacon Street on October 6, without any public notice, appear before this Board at its next regular meeting, to respond to concerns about the surprise tree removal.

Meeting History

Oct 12, 2017 7:00 PM Video **City Council** **Regular Meeting**

Alderman Heuston described the shock and anger of the Beacon Street neighborhood. Director of Intergovernmental Affairs Tim Snyder said the Administration shares the anger of the Board and the community. The contract on Beacon Street is administered by the State. The contractor approved a sub-contractor to cut the trees down, without the approval of Mass DOT or the City. The contractor communicates regularly with the City about upcoming work, and had told the City that there was no more work to be done in that portion of the corridor for the remainder of the season. Because no work was scheduled, there was no City presence in the area. Community representative Lumina Gerschfield-Cordova spoke about the loss of the trees, said the community wants to have mature trees planted in their place by a professional arborist, and announced a vigil at 5 PM on Sunday to mourn their loss.

RESULT: APPROVED

Oct 24, 2017 6:30 PM **Public Utilities and Public Works Committee** **Committee Meeting**

Mr. Rawson, Mr. Maloy and Mr. Stedman addressed this item. Members questioned what the city knew about the cutting down of the trees. Members were told that there was a signed contract that gave the contractor authorization to remove the trees.

The committee was told that 17 trees were removed in May and one tree was removed in October and one in November due to unforeseen circumstances. MassDOT representatives said that they walked the site with the tree warden to review the plans of the work to be done. The utility work took place on Washington Street (to Cambridge) and was wrapped up a little quicker than expected. Newport Construction came to MassDOT requesting to get started on the next phase of the project. There were bi-weekly construction meetings and the message was to delay and defer work until the spring of 2018. At a later date, Newport provided a 3-week look ahead schedule showing no tree work and no work in the southern area of Somerville.

♂Alderman Davis inquired about the meeting on September 20th when the decision was made not to go forward with the project and asked Mr. Rawson what would have been the communication plan if the trees were to be removed. Mr. Rawson replied that there would have been community engagement, including emails blasts, from January through March. Alderman Davis also asked at what point was Northern Tree informed about the revised schedule to remove the trees and he asked for a document to provide greater details on who told Northern to take down the trees. MassDOT representatives said they will confirm whether Newport Construction gave Northern the approval to remove the trees. MassDOT said that Newport reached out to them and they followed up with the city regarding the work. The September 20th meeting was not a scheduled bi-weekly meeting, (when minutes are usually taken by DCR), adding that there was a breakdown in communication with the contractor.

♂Alderman Heuston mentioned pieces of wood with nails protruding from them that were left out by the contractor on the northern side of Somerville. She went on to say that streets were not swept, dirt blows into peoples' windows, there's no signage saying where to cross the street, people had to walk in the street and bike lanes and there is no safe passage for people and baby carriages. Alderman Heuston said that the city needs to hire someone to oversee the Beacon Street project, noting that she originally made this request at a Planning Board meeting. Mr. Rawson said that city staff are at construction sites constantly. She also mentioned the loophole (re: notification) in the tree ordinance, that was discussed in the Legislative Matters Committee meeting and asked if closing the loophole would apply to MassDOT projects. Alderman Heuston stated her concern with the lack of notifications on the street about the project and the holding of parking spaces for the project's trucks and commented on the communications from the Administration that MassDOT and the Administration are reviewing recourse options regarding the trees and that the Administration would work with the BOA to enhance the tree ordinance.♂Chairman McWatters stated that not having a police detail on the project was a failure on everyone's part and he asked if the contractor will be allowed to continue with this project. MassDOT representatives said the removal of the trees wasn't supposed to happen until the spring and that the contractor didn't violate any laws. MassDOT said that Newport forgot to call off the contractor after

the September 20th meeting and the MassDOT resident engineer had no idea the trees were being removed. Phone calls started coming in from the city on Thursday and on Friday, MassDOT shut down the contractor.

♣Alderman Heuston asked Mr. Rawson to provide an accounting of the trees scheduled to be removed in 2014 and 2015. Alderman White would like the Administration review the plans to see how they changed and how many trees were scheduled to be removed. Both Aldermen White and Heuston asked about the difference of the 75% plan and 100% plan, who was alerted to the change and what was the rational of the change of plans. There was also a discussion about trees being preserved, raising a question about when that changed.

♣Resident Adam Pordereny asked if the trees were going to be removed anyway and if the city knew that they were being removed. He raised a question about the tree stumps and their removal pointing out that they could create a dangerous situation should they become covered with snow. Resident Tori Antonio asked about the tree replacement fund and how much would go into that fund.

♣MassDOT said there are 198 replacement trees scheduled as part of the project.

RESULT: KEPT IN COMMITTEE

Dec 7, 2017 6:30 PM	Public Utilities and Public Works Committee	Committee Meeting
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RESULT: WORK COMPLETED

Dec 14, 2017 7:00 PM Video	City Council	Regular Meeting
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RESULT: WORK COMPLETED

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Final Report ☐

Interim Report ☒

CONTRACTOR PROJECT EVALUATION FORM

Date: October 23, 2017

City/Town Somerville/Cambridge

Contractor: Newport Construction

Project: Reconst. and Related Work on Beacon St.

Address: 145 Temple Street
Nashua, NH 03060

F.A. No. HP-002S(711)X

Contract Number: 90025

Bid Price: \$11,038,742.41

Notice to Proceed: February 24, 2016

Funds: State: (x) Fed Aid (x)

Current Contract Completion Date: August 28, 2018

Date Work Started May 1, 2016

Date Work Completed*: _____

Contractor's Superintendent: Steve Barry

Division: (Indicates class of work) Highway: x Bridge: _____ Maintenance: _____

*If work was NOT completed within specified time (including extensions) give reasons on following page.

	Excellent 10	Very Good 9	Average 8	7	Fair 6	5	Poor 4	% Rating	
1. Workmanship			x					x 2=	16
2. Safety				x				x 2=	14
3. Schedule						x		x 1.5=	7.5
4. Home Office Support					x			x 1=	6
5. **Subcontractors Performance				x				x 1=	7
6. Field Supervision/ Superintendent						x		x 1=	5
7. Contract Compliance				x				x 0.5=	3.5
8. Equipment				x				x 0.5=	3.5
9. Payment of Accounts				x				x 0.5=	3.5
(use back for additional comments)						Overall Rating:			66.0

(Give explanation of items 1 through 9 on the following page in numerical order if overall rating is below 80%. Use additional sheets if necessary.) **If No Subcontractors #5 - Overall Rating is pro-rated (divided by 0.9).

District Construction Engineer's Signature/Date _____

Resident Engineer's Signature/Date _____

Contractor's Signature Acknowledging Report/Date _____

Contractor Requests Meeting with District? No Yes Date Held: _____

Contractor's Comments / Meeting Notes (extra sheets may be added to this form and noted here, if needed): _____

Date: October 23, 2017

Contract Number: 90025

INFORMATION FOR DISTRICT HIGHWAY DIRECTORS RELATING TO PREQUALIFICATION

A deduction shall be recommended for unsatisfactory performance if computed overall rating is under 80%.
A deduction may be recommended for this project being completed late due to the Contractor's fault.

RECOMMENDATIONS FOR DEDUCTIONS FROM CONTRACTORS' ASSIGNED FACTOR

(Write Yes or No in space provided)

I recommend a deduction for Contractor's unsatisfactory performance: _____

I recommend a deduction for project completed late: _____

Signed: _____
District Highway Director

EXPLANATION OF RATINGS 1-9

2) Newport's work crew occasionally needs to be reminded to wear all of the required safety equipment, including vests.

3) Newport's short term schedules have been inaccurate, not submitted in the proper format and not to the level of detail required by the specifications. Operations are listed on a weekly not daily basis and locations given are general and not specific. Recent tree cutting, performed on 10/4 -6/17, was not listed on the short term schedule or discussed at the project progress meeting, creating a major issue with the City and local residents.

4) Home office support needs improvement, particularly in the areas of scheduling & providing materials documentation.

5) Newport needs better communication and coordination with their subcontractors. Examples include tree cutting listed above and coordination with Dagle Electric regarding electrical service connections. The service connections had been discussed with Dagle at the start of the project but no further action was taken until recently. Due to lead times required for Eversource work orders, this could delay utility relocation work and impact overall schedule.

6) Newport's Superintendent needs to improve communications with MassDOT, the City of Somerville and residents regarding work schedule and operations. Examples would include the tree cutting listed above and notifications to the abutters regarding construction activity impacting residences. Two trees were removed at Sta 150+80 RT and Sta 160+40 LT that were called to be retained on the plans. There were no notifications in advance of this work.

WORK NOT COMPLETED WITHIN SPECIFIED TIME: